

EXHIBIT 9A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----X
H. CHRISTINA CHEN-OSTER; LISA PARISI;
4 and SHANNA ORLICH,

5 Plaintiffs,

6 -against-

7 GOLDMAN, SACHS & CO. and THE GOLDMAN
SACHS GROUP, INC.,

8 Defendants.

9 CASE NO.: 10-CV-06950 (LBS) (JCF)
10 -----X

11
12 250 Hudson Street
New York, New York

13
14 August 1, 2013
9:10 a.m.

15
16 CONTINUED DEPOSITION of 30(b)(6)
17 Witness, JESSICA KUNG, before Shari Cohen, a
18 Notary Public of the State of New York.
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25

Page 263	Page 265
<p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP</p> <p>4 Attorneys for Plaintiffs</p> <p>5 275 Battery Street</p> <p>6 San Francisco, California 94111</p> <p>7 BY: ANNE SHAVER, ESQ.</p> <p>8 KELLY DERMODY, ESQ.</p> <p>9 PHONE 415-956-1000</p> <p>10 FAX 415-956-1008</p> <p>11 EMAIL ashaver@lchb.com</p> <p>12</p> <p>13 PAUL HASTINGS LLP</p> <p>14 Attorneys for Defendants</p> <p>15 875 15th Street, N.W.</p> <p>16 Washington, DC 20005</p> <p>17 BY: CARSON SULLIVAN, ESQ.</p> <p>18 PHONE 202-551-1717</p> <p>19 FAX 202-551-0117</p> <p>20 EMAIL carsonsullivan</p> <p>21 @paulhastings.com</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 264	Page 266
<p>1 A P P E A R A N C E S (CONT'D):</p> <p>2</p> <p>3 SULLIVAN & CROMWELL LLP</p> <p>4 Attorneys for Defendants</p> <p>5 125 Broad Street</p> <p>6 New York, New York 10004</p> <p>7 BY: SUHANA HAN, ESQ.</p> <p>8 PHONE 212-558-4647</p> <p>9 FAX 212-558-3588</p> <p>10 EMAIL hands@sullcrom.com</p> <p>11</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14 ADAM HEFT</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>-oOo-</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9A - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED AUGUST 1, 2013
(PAGES 267-274)**

FILED UNDER SEAL

<p style="text-align: right;">Page 275</p> <p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 277</p> <p>1 A. Can you rephrase the question?</p> <p>2 Q. Is there any record of which</p> <p>3 managers attend the training sessions?</p> <p>4 A. When employees attend training</p> <p>5 sessions, it's recorded on their training</p> <p>6 transcript so it is recorded.</p> <p>7 Q. Does IMD do any monitoring to</p> <p>8 ensure that new managers attend a training on</p> <p>9 the 360 degree review process?</p> <p>10 MS. SULLIVAN: Objection vague.</p> <p>11 A. The training transcripts are</p> <p>12 available to us and in years where we had</p> <p>13 mandatory training sessions we're able to see</p> <p>14 which managers have attended and which</p> <p>15 haven't and we're able to follow up with</p> <p>16 those that haven't.</p> <p>17 Q. Where are the training</p> <p>18 transcripts kept for managers?</p> <p>19 A. The training transcripts are</p> <p>20 accessible at any time to HCM from our</p> <p>21 Goldman Sachs University, our training team.</p> <p>22 They are also accessible to employees'</p> <p>23 managers through the review feedback book.</p> <p>24 Q. So if I wanted a copy of an</p> <p>25 employee's training transcript, where would I</p>
<p style="text-align: right;">Page 276</p> <p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 278</p> <p>1 go to find it?</p> <p>2 A. From the perspective of you as</p> <p>3 HCM or you as the employee's manager?</p> <p>4 Q. As a manager?</p> <p>5 A. As a manager you would receive</p> <p>6 the most up-to-date training transcript as</p> <p>7 part of the review book, but you could always</p> <p>8 reach out to HCM and we can pull it for you</p> <p>9 at any time.</p> <p>10 Q. How about as an employee?</p> <p>11 A. Employees have access to their</p> <p>12 training portal which shows them all of the</p> <p>13 classes that they have completed, registered</p> <p>14 for, wait listed for so they can access it at</p> <p>15 any time.</p> <p>16 Q. Could you please turn to page</p> <p>17 113234?</p> <p>18 A. Okay.</p> <p>19 Q. Please take a minute to review</p> <p>20 this page to yourself.</p> <p>21 A. Okay.</p> <p>22 Q. Is this an accurate summary of</p> <p>23 the 360 degree review process for IMD?</p> <p>24 A. It is.</p> <p>25 MS. SULLIVAN: Objection vague.</p>

Page 279	Page 281
<p>1 Q. Is that true from 2002 to the 2 present?</p> <p>3 A. Let me clarify what I said so 4 when you asked if this is an accurate 5 reflection of the IMD process I said it was. 6 These are high level bullet points so there 7 is additional nuances not captured here, but 8 at a high level, yes, this is an accurate 9 reflection and it's consistent with how we 10 have done it in the prior years.</p> <p>11 Q. From 2002 to the present?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the 14 manager summary?</p> <p>15 A. I am familiar.</p> <p>16 Q. Do you recall when the manager 17 summary was created in IMD?</p> <p>18 A. My understanding is that we've 19 always had a manager summary in IMD.</p> <p>20 Q. Is an employee's direct manager 21 required to be a reviewer in the 360 degree 22 process?</p> <p>23 A. Yes, because the primary 24 manager, direct manager completes the manager 25 summary.</p>	<p>1 the present?</p> <p>2 A. The guidelines of having 8 to 3 12 employees on the list has been the same.</p> <p>4 Q. If you look at the next bullet 5 point, has it been true from 2002 to the 6 present that a manager has full discretion to 7 add or delete the names on an employee's list 8 and/or modify the indicated level of 9 interaction and relationship if he thinks 10 it's warranted?</p> <p>11 MS. SULLIVAN: Objection 12 compound. Document speaks for itself.</p> <p>13 A. Can you repeat the question?</p> <p>14 Q. Has it been true from 2002 to 15 the present that a manager has full 16 discretion to add or delete the names on an 17 employee's list and/or modify the indicated 18 level of interaction and relationship if you 19 think it's warranted?</p> <p>20 MS. SULLIVAN: Same objection.</p> <p>21 A. Let me take the answer in a 22 couple of parts because it's a couple of 23 different things so one is the actual names 24 on a review list documents the level of 25 interaction and three is the relationship in</p>
Page 280	Page 282
<p>1 Q. Apart from completing the 2 manager summary, does the manager also 3 participate in the 360 degree review?</p> <p>4 A. Yes, the manager participates 5 in the 360 degree review.</p> <p>6 Q. So is it accurate that the 7 manager and employee's direct manager 8 completes a manager summary and will give 9 feedback in the 360 degree review itself?</p> <p>10 A. Let me clarify what I said 11 before so an employee's direct manager 12 because the feedback is meant to be taken 13 through the manager summary, the direct 14 manager is not -- does not use up one of the 15 spaces on the review list.</p> <p>16 Q. Has that been true from 2002 to 17 the present?</p> <p>18 A. Yes, it has.</p> <p>19 Q. Could you take a look at the 20 next page, please, 113325?</p> <p>21 A. Okay.</p> <p>22 Q. It states here all employees 23 will create a review list of 8 to 12 24 individuals. Has the number of individuals 25 on the review list been 8 to 12 from 2002 to</p>	<p>1 terms of junior, peer or senior and those are 2 three different things, but the answer is the 3 same for all three which is that this is 4 really a conversation between the manager and 5 the employee. The best practice and what 6 usually happens is employees and managers 7 actually discuss the list and come to an 8 agreement before the list is even submitted 9 into our system. Of course in cases where 10 the list is submitted without any discussion 11 beforehand, once the manager sees the 12 employee's list, it has not been my 13 experience where I have seen instances of a 14 manager changing names, level of interaction 15 or relationships without discussing with the 16 employee first.</p> <p>17 Q. Could you please read to 18 yourself the second bullet point on this page 19 that starts with please review each 20 employee's list?</p> <p>21 A. Okay.</p> <p>22 Q. Is that accurate?</p> <p>23 MS. SULLIVAN: Object to the 24 form of the question.</p> <p>25 A. Can you be more specific?</p>

Page 283		Page 285	
1	Q. Is there anything inaccurate	1	REDACTED FILED UNDER SEAL
2	about what's written in bullet point number	2	
3	two on 113325?	3	
4	MS. SULLIVAN: Same objection.	4	
5	A. The phrase that says you have	5	
6	full discretion to add or delete names I	6	
7	believe doesn't truly reflect the actual	7	
8	practice in IMD. Hypothetically if it came	8	
9	down to it, the manager is the one approving	9	
10	the individual's reviewer list so if he or	10	
11	she felt that a name needs to be added or	11	
12	removed and the employee of the manager	12	
13	cannot come to an agreement, the manager can	13	
14	make a decision that he or she feels is more	14	
15	appropriate, however, I have not seen that	15	
16	actually happen in practice and usually the	16	
17	manager and employee agree to any changes.	17	
18	Q. Is that true that the manager	18	
19	can make a decision that he or she feels is	19	
20	more appropriate from 2002 to the present?	20	
21	A. It's usually in consultation	21	
22	with the employee, but yes, that's true.	22	
23	Q. Are you aware of any published	23	
24	criteria for which managers should add or	24	
25	remove a name from an employee's review list?	25	
Page 284		Page 286	
1	MS. SULLIVAN: Objection vague.	1	REDACTED FILED UNDER SEAL
2	A. I believe we actually see that	2	
3	in the second bullet point where it says that	3	
4	please review each employee's list enough for	4	
5	us to carefully to ensure that includes an	5	
6	appropriate balance of reviewers there are	6	
7	more senior, more junior, peers and internal	7	
8	clients. That similar type of language is	8	
9	repeated in communications to both employees	9	
10	and managers during the review list creation	10	
11	and approval process.	11	
12	Q. What is the instruction here on	12	
13	what is an appropriate balance?	13	
14	MS. SULLIVAN: Objection vague.	14	
15	A. Can you rephrase the question,	15	
16	please?	16	
17	Q. How are managers to know what	17	
18	is an appropriate balance? Are you aware of	18	
19	any published criteria on what constitutes an	19	
20	appropriate balance?	20	
21	MS. SULLIVAN: Objection vague.	21	
22	A. Appropriate balance will mean	22	
23	different things for different people	23	
24	depending on what level they are at. Clearly	24	
25	Goldman has a 360 review process so by	25	

Page 287	Page 289
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A. Even though the employees are</p> <p>2 at the same title, they may be working in</p> <p>3 different functions or different projects.</p> <p>4 The most important thing about the reviewer</p> <p>5 list besides being 360 in the truer sense is</p> <p>6 also to reflect those that had the most</p> <p>7 interactions so that reviewers can provide</p> <p>8 substantive feedback so it's possible that</p> <p>9 reviewer lists may be different for employees</p> <p>10 with the same title.</p> <p>11 Q. It's possible that review lists</p> <p>12 may contain a different balance of reviewers</p> <p>13 who are more junior, senior or peer?</p> <p>14 A. That's correct.</p> <p>15 MS. SHAVER: Please mark the</p> <p>16 next exhibit.</p> <p>17 (Plaintiff's Exhibit 229,</p> <p>18 Feedback Book, marked for</p> <p>19 Identification.)</p> <p>20 Q. Do you recognize Exhibit 229?</p> <p>21 A. Let me just take a minute to</p> <p>22 scan. Yes, I'm familiar with this.</p> <p>23 Q. Could you please turn to the</p> <p>24 page marked -- could you tell me what this</p> <p>25 is?</p>
Page 288	Page 290
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A. This is what we call a feedback</p> <p>2 book, a feedback review book which is a</p> <p>3 compilation of all of the quantitative and</p> <p>4 qualitative comments for an employee from the</p> <p>5 reviewer group.</p> <p>6 Q. What's the purpose of a</p> <p>7 feedback book?</p> <p>8 A. The feedback book goes to the</p> <p>9 manager only. It's not for the employees</p> <p>10 eyes and meant to serve as a resource for the</p> <p>11 manager to both write the manager summary as</p> <p>12 well as ultimately deliver the review.</p> <p>13 Q. Has IMD used feedback books</p> <p>14 from 2002 to the present?</p> <p>15 A. Yes, we have.</p> <p>16 Q. Could you please turn to the</p> <p>17 page marked 121248. Does this indicate that</p> <p>18 IMD has used a five point rating scale since</p> <p>19 at least 2003?</p> <p>20 MS. SULLIVAN: Objection vague.</p> <p>21 A. Can you be more specific or</p> <p>22 rephrase, please?</p> <p>23 Q. Do you see in the second box on</p> <p>24 the page there is a rating scale?</p> <p>25 A. Yes.</p>

Page 291	Page 293
<p>1 Q. It gives ratings from five to</p> <p>2 one?</p> <p>3 A. Yes.</p> <p>4 Q. Is it true that in 2003 IMD</p> <p>5 used a five point rating scale?</p> <p>6 A. That's correct.</p> <p>7 Q. Do you know for what years</p> <p>8 that's true?</p> <p>9 A. IMD used the five point rating</p> <p>10 scale from -- up until 2010, 2011 time</p> <p>11 period.</p> <p>12 Q. Thank you.</p> <p>13 MS. SHAVER: Please mark</p> <p>14 Exhibit 230.</p> <p>15 (Plaintiff's Exhibit 230,</p> <p>16 Feedback Book, marked for</p> <p>17 Identification.)</p> <p>18 Q. Do you recognize this document?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is it?</p> <p>21 A. This is also a feedback book</p> <p>22 from 2004.</p> <p>23 Q. Could you please turn to the</p> <p>24 page marked 121338. Do you see the heading</p> <p>25 marked C, unadjusted verses adjusted core</p>	<p>1 the unadjusted score. The adjusted score</p> <p>2 adjusts for rater leniency or harshness and</p> <p>3 the same formula so to speak is applied to</p> <p>4 all employees.</p> <p>5 Q. How does the adjusted score</p> <p>6 adjust for rater leniency and harshness?</p> <p>7 A. There is a specific algorithm</p> <p>8 which I personally have not seen, but my</p> <p>9 understanding of it at a high level is the</p> <p>10 algorithm looks at each reviewer to see on</p> <p>11 the scale which in this year was one to five</p> <p>12 what scores the reviewer typically gives and</p> <p>13 of course normalizing for differences in</p> <p>14 performance. If the reviewer tends to rate</p> <p>15 one two or tends to rate four or five, the</p> <p>16 algorithm will normalize the score.</p> <p>17 Q. Am I understanding you</p> <p>18 correctly that the 360 degree review process</p> <p>19 produces an adjusted and unadjusted score</p> <p>20 based on all the criteria contained in the</p> <p>21 review and another score based on just the</p> <p>22 three core items?</p> <p>23 MS. SULLIVAN: Objection to the</p> <p>24 form of the question as vague. Are</p> <p>25 you referring to this 2004?</p>
Page 292	Page 294
<p>1 item average comparison?</p> <p>2 A. Yes.</p> <p>3 Q. What are the core items?</p> <p>4 A. I am actually not sure what the</p> <p>5 core items are for this specific year.</p> <p>6 Q. Do you know what the phrase</p> <p>7 core items refers to?</p> <p>8 A. I think my understanding is</p> <p>9 that core items are a subset of all the</p> <p>10 categories that we had. I can't recall what</p> <p>11 the three specific categories are.</p> <p>12 Q. Are the core items the only</p> <p>13 criteria on which employees are ultimately</p> <p>14 scored?</p> <p>15 MS. SULLIVAN: Objection vague.</p> <p>16 A. They are not the only criteria</p> <p>17 on which employees are scored. This is just</p> <p>18 one -- this meaning this unadjusted verses</p> <p>19 adjusted core average is just one of multiple</p> <p>20 data points in this feedback book.</p> <p>21 Q. What's the purpose of adjusted</p> <p>22 verses unadjusted core item average</p> <p>23 comparison?</p> <p>24 A. The purpose of the comparison</p> <p>25 is to show managers the adjusted score verses</p>	<p>1 Q. In 2004?</p> <p>2 A. Can you repeat the question?</p> <p>3 Q. Is it correct that in 2004</p> <p>4 employees received two scores as a result of</p> <p>5 their 360 degree review process, one an</p> <p>6 adjusted and unadjusted core item score and</p> <p>7 two an adjusted and unadjusted score based on</p> <p>8 all the criteria?</p> <p>9 MS. SULLIVAN: Objection vague.</p> <p>10 A. Based on the feedback here it</p> <p>11 doesn't look like employees received an</p> <p>12 adjusted and unadjusted score based on all</p> <p>13 the categories, it looks like they received</p> <p>14 multiple scores as we can see in this</p> <p>15 feedback book comparing to peer groups based</p> <p>16 on category and two of those multiple data</p> <p>17 points are the unadjusted and adjusted core</p> <p>18 item average score.</p> <p>19 Q. In 2004 what 360 degree score</p> <p>20 would go into an employee's CRS file?</p> <p>21 MS. SULLIVAN: Objection. You</p> <p>22 had the opportunity to take a</p> <p>23 deposition on a witness on the CRS</p> <p>24 system.</p> <p>25 A. Let me clarify what I said</p>

Page 295	Page 297
<p>1 earlier so the three criteria that go into 2 the core item score is overall commercial 3 effectiveness, leadership and overall 4 professional performance and the adjusted 5 score is not displayed if the individual -- 6 if the reviewee was not rated on these three 7 criteria. In addition, the adjustment 8 algorithm relies on the structural pattern 9 connecting reviewers and reviewees and the 10 number of reviews a reviewer writes. 11 Q. So for purposes of reporting an 12 employee's performance in CRS file in 2004, 13 would the 360 score come from the core item 14 average? 15 MS. SULLIVAN: Objection, asked 16 and answered and you've already had 17 the opportunity to take a full 18 deposition of a witness on the CRS 19 system. 20 A. In a reporting if we choose to 21 show just one data point for 360 review, it 22 typically has been the adjusted average 23 score, however, if we have opportunity to 24 show more than one field, we will show a 25 fuller data set as well.</p>	<p>1 summary without numbers, but in a qualitative 2 way gives the relative performance messaging. 3 Q. Who designated overall 4 commercial effectiveness, leadership and 5 overall professional performance as core 6 items? 7 MS. SULLIVAN: Just for the 8 record, as you know another deposition 9 is scheduled regarding the 360 process 10 -- 360 so to the extent that's outside 11 her knowledge she can answer in her 12 individual capacity if she knows. 13 A. I think IMD would have been 14 involved in the decision, but as to if any 15 other parties were involved I'm not sure. 16 Q. So you are not 100 percent sure 17 where the designation of core items comes 18 from? 19 A. That's right. 20 Q. Is the core item list 21 determined at a firm level? 22 MS. SULLIVAN: Objection vague. 23 That's outside the scope of her 24 designation. If you know in your 25 individual capacity, you can answer.</p>
Page 296	Page 298
<p>1 Q. Let me clarify what you just 2 said. When you said typically has been the 3 adjusted average score, did you mean it to be 4 the adjusted average core item score? 5 MS. SULLIVAN: Objection; 6 misstates the testimony. 7 A. Typically we show the adjusted 8 average score. In some years it's been 9 called the core item score and over time as 10 the process has evolved that changed to be 11 called something different, also an adjusted 12 average score, but the actual definition has 13 changed. 14 Q. How about for 2004? 15 A. For 2004 it would be the 16 adjusted core item score. 17 Q. Do employees receive their 18 adjusted core item score? 19 MS. SULLIVAN: Objection 20 vague. Are you referring to 2004? 21 Q. Let me rephrase. In all years 22 2002 to the present, do employees receive 23 their adjusted average score? 24 A. Employees do not receive their 25 score, but they do receive the manager</p>	<p>1 REDACTED FILED UNDER SEAL 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9A - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED AUGUST 1, 2013
(PAGES 299-302)**

FILED UNDER SEAL

Page 303

REDACTED FILED UNDER SEAL

Page 305

MS. SULLIVAN: Okay.

Q. Do you recognize this document?

A. I do.

Q. What is it?

A. So this is a feedback book from 2006. I would flag that it's different from what we looked at earlier because the feedback book is preceded by the manager summary and there is also a training transcript at the end.

Q. Is the manager summary shared with the employee in IMD?

A. It is.

Q. Could you please look at page 120207. You see at point C there it reads unadjusted verses adjusted nine item average comparison?

A. Yes.

Q. Is that different than what we looked at before in that it's nine items rather than three?

MS. SULLIVAN: Objection vague.

A. It's the same concept where we are taking an average score and you have the unadjusted score or adjusted, but yes, this

Page 304

from 2002 to the present?

A. This rule has been in place ever since we had this quartile concept.

Q. So at least since 2005; is that fair?

A. Yes.

Q. Is there an outer limit on the number of employees that can be included in the peer group?

A. Not that I'm aware of.

Q. Is that also true from at least 2005 to the present?

A. Yes, that's also true.

MS. SHAVER: Let's take a break.

(Recess taken.)

MS. SHAVER: Please mark the next exhibit 233.

(Plaintiff's Exhibit 233, Feedback Book, marked for Identification.)

MS. SULLIVAN: This looks like two separate --

MS. SHAVER: The Bates numbers are consecutive.

Page 306

is based on nine criteria as opposed to three.

Q. Do you know why IMD changed to nine criteria from three in 2006?

MS. SULLIVAN: Objection vague.

A. The review process continued to evolve and evolve over time and so this was just part of that evolution. When I look at the actual specific categories, the kind of labeling of those categories are a little bit different as well.

Q. What are you referring to?

A. I'm referring to the actual category names.

Q. What page are you looking at?

A. 0120213.

Q. There's only six categories there; is that right?

A. I believe it continues onto the following page.

Q. I see, there are 12 categories in total?

A. Yes.

Q. Those are the same categories as listed on 120211, correct?

Page 307	Page 309
<p>1 A. Yes, that's correct.</p> <p>2 Q. What are the nine criteria that</p> <p>3 go into the average comparison?</p> <p>4 A. Technical skills, communication</p> <p>5 skills, judgment problem solving, team work,</p> <p>6 compliance, diversity, leadership, overall</p> <p>7 commercial effectiveness and overall</p> <p>8 professional performance.</p> <p>9 Q. Is that something that you know</p> <p>10 from your work experience or is there</p> <p>11 something in this document that indicates to</p> <p>12 you those are the nine criteria included in</p> <p>13 the average comparison?</p> <p>14 A. I'm familiar with the</p> <p>15 categories, but it's also stated on 0120209.</p> <p>16 It's the single asterisk.</p> <p>17 Q. Thank you. Who determined that</p> <p>18 these nine criteria would be part of the</p> <p>19 average comparison?</p> <p>20 A. Similar to what I said before</p> <p>21 when we were asking or when we were</p> <p>22 discussing the three item core average score</p> <p>23 my understanding is IMD was involved, but as</p> <p>24 to whether or not other parties were as well,</p> <p>25 I'm not certain.</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 308	Page 310
<p>1 Q. Is it possible that that was a</p> <p>2 firm wide shift in 2006?</p> <p>3 MS. SULLIVAN: Objection. She</p> <p>4 can testify as to IMD, that's what</p> <p>5 she's been designated for. Anything</p> <p>6 outside of the IMD division she can</p> <p>7 answer in her personal capacity.</p> <p>8 A. My understanding is IMD would</p> <p>9 have had input. I don't want to speculate</p> <p>10 whether it's firm side or what other parties</p> <p>11 may have been involved.</p> <p>12 Q. You're not sure one way or the</p> <p>13 other?</p> <p>14 A. Not sure.</p> <p>15 Q. Would you please look at page</p> <p>16 120209?</p> <p>17 A. Okay.</p> <p>18 Q. Is the performance review rank</p> <p>19 based on adjusted nine item average of the</p> <p>20 same as the derived quartile score from 2005?</p> <p>21 MS. SULLIVAN: Objection vague.</p> <p>22 A. Can you remind me what the</p> <p>23 derived quartile score is that you are</p> <p>24 referring to from 2005?</p> <p>25 Q. Can you look at Exhibit 231,</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 311	Page 313
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Are those the same nine items</p> <p>2 or nine criteria as in 2006?</p> <p>3 MS. SULLIVAN: Object to the</p> <p>4 extent the documents speak for</p> <p>5 themselves.</p> <p>6 A. Yes, as we can see from the</p> <p>7 asterisk it's the same nine criteria.</p> <p>8 Q. In 2007 did the performance</p> <p>9 review rank also involve five buckets?</p> <p>10 A. Yes, they did.</p> <p>11 Q. So it worked the same way as in</p> <p>12 2006?</p> <p>13 A. The same as in 2006.</p> <p>14 Q. Did the investment management</p> <p>15 division also use the performance review rank</p> <p>16 in 2008?</p> <p>17 A. Yes, we did as well.</p> <p>18 Q. Did it work the same way as in</p> <p>19 2007 and 2006?</p> <p>20 MS. SULLIVAN: Objection vague.</p> <p>21 A. If the question relates to the</p> <p>22 nine item and the one through five bucketing</p> <p>23 same approach.</p> <p>24 Q. How about in 2009, did IMD use</p> <p>25 the performance review rank in 2009?</p>
Page 312	Page 314
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A. I believe we used it in 2009 as</p> <p>2 well.</p> <p>3 Q. Was it also based on the nine</p> <p>4 item average?</p> <p>5 A. Yes.</p> <p>6 Q. Did it also involve five</p> <p>7 buckets?</p> <p>8 MS. SULLIVAN: Objection vague.</p> <p>9 A. I believe we used the one</p> <p>10 through five bucketing as well.</p> <p>11 MS. SHAVER: Please mark the</p> <p>12 next exhibit as 235.</p> <p>13 (Plaintiff's Exhibit 235,</p> <p>14 Feedback Book, marked for</p> <p>15 Identification.)</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I do.</p> <p>18 Q. What is it?</p> <p>19 A. It's a feedback book from 2010</p> <p>20 which includes manager summary.</p> <p>21 Q. Could you please turn to page</p> <p>22 121441. Does this refresh your recollection</p> <p>23 that IMD moved to a nine point rating scale</p> <p>24 in 2010?</p> <p>25 A. It does.</p>

Page 315		Page 317	
1	Q. Could you turn the page,	1	REDACTED FILED UNDER SEAL
2	please. Did IMD use the same process for the	2	
3	performance review rank in 2010 as in 2006	3	
4	through 2009?	4	
5	MS. SULLIVAN: Objection vague.	5	
6	A. If you are asking whether we	6	
7	used the same categories for the adjusted	7	
8	average score and the same bucketing, we used	8	
9	the same approach.	9	
10	Q. Do you know why IMD moved to a	10	
11	nine point scale in 2010?	11	
12	A. We moved to the nine point	12	
13	scale because we wanted to give managers a	13	
14	broad range so that they could more	14	
15	differentiate their employees' performance.	15	
16	Q. You could put that aside. Are	16	
17	you familiar with the term manager	17	
18	performance quartiling?	18	
19	A. Yes, I believe that relates to	19	
20	the quartiling process. We have many terms	20	
21	that are similar sounding.	21	
22	Q. Can you tell me what the	22	
23	quartiling process is?	23	
24	MS. SULLIVAN: Objection vague.	24	
25	A. Can you rephrase or be more	25	
Page 316		Page 318	
1	REDACTED FILED UNDER SEAL	1	REDACTED FILED UNDER SEAL
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Page 319	Page 321
<p>1 IMD use that approach to quartiling where 2 quartiles two and three were combined? 3 A. We used that since I would 4 estimate 2006, 2007. 5 Q. Prior to the 2006/2007 time 6 period, how many quartiles did IMD use? 7 A. My understanding is again it's 8 spanned from one through five, but we 9 quartiled the top 25 percent so Q1 and Q5 10 which is the bottom ten percent. 11 Q. In that time period, I'm sorry, 12 strike that. For how many years did IMD use 13 that approach? 14 MS. SULLIVAN: Objection vague. 15 A. In terms of ranking the top and 16 the bottom we used that approach for I would 17 estimate four or five years. 18 Q. So from 2002 to the 2006 or 19 2007 time period? 20 A. Right. 21 Q. During that time period if 22 employees were neither in the top 25 percent 23 or bottom ten percent, what quartile did they 24 receive? 25 MS. SULLIVAN: Objection vague.</p>	<p>1 MS. SULLIVAN: Objection vague. 2 A. So the 360 degree score is -- 3 because it's a performance measure, it's an 4 important input into quartiling. Quartiling 5 is the manager's assessment and potential 6 needs to be taken into account as well. 7 Given the range of levels and functions and 8 businesses, it would be difficult for us to 9 be prescriptive to our managers and say you 10 must assign the 360 degree score X percent 11 when you are looking at manager quartiling, 12 however, our managers understand that the 360 13 review score as an aggregation of feedback 14 from people that the employee has worked with 15 is a very important input. 16 Q. How far is a manager quartile 17 allowed to deviate from the rank an employee 18 earned based on his or her 360 degree review 19 score? 20 MS. SULLIVAN: Objection vague. 21 A. Can you rephrase the question, 22 please? 23 Q. In other words, is it 24 acceptable for an employee to earn a 360 25 degree review score or rank of five and a</p>
Page 320	Page 322
<p>1 A. If they were neither a Q1 or Q5 2 they had a blank designation which meant to 3 us that they were in the middle population. 4 Q. In the IMD division is an 5 employee's 360 score a factor in the manager 6 quartile? 7 A. Yes, it is. 8 Q. Has that been true from 2002 to 9 the present? 10 A. Yes, that's correct. 11 Q. How much of a factor is it, in 12 other words, how much does the 360 degree 13 review score count in the manager quartile? 14 MS. SULLIVAN: Objection vague. 15 A. So as I said before, the 16 manager quartile is a performance assessment 17 just as the 360 degree score is a performance 18 assessment as well and during the time frame 19 in question the 360 scores always been an 20 input into manager quartiling. It's an 21 important input into manager quartiling and 22 has been in each of those years. 23 Q. But there is no defined weight 24 to the 360 degree review score as it pertains 25 to the manager quartile, is that right?</p>	<p>1 manager quartile of one? 2 MS. SULLIVAN: Objection vague, 3 hypothetical. 4 A. It's okay for the 360 degree 5 rank to be different from the manager 6 quartile while they are both performance 7 measures and the 360 is an important input 8 into quartiling the quartile is the manager's 9 assessment of the employee's relative 10 performance compared to the appropriate peer 11 group and so yes, there can be differences. 12 Q. Is there any formal limit in 13 IMD on how different the performance review 14 rank and the manager quartile can be? 15 A. As HCM and as administrators 16 and facilitators of the quartiling the 17 manager quartiling process as we collect 18 these recommendations we do view them in 19 connection with the 360 quartile and to the 20 extent that we have questions or areas where 21 we need more understanding of any differences 22 between the two, we will ask managers to 23 explain those differences. 24 Q. I want to come back to that, 25 but first I want to get an answer to my</p>

Page 323	Page 325
<p>1 question about whether there is a formal 2 limit in IMD on how different the performance 3 review rank can be from the manager quartile? 4 MS. SULLIVAN: Objection vague. 5 A. As far as whether we have 6 formal limits that you can't be X number of 7 slots different between the two, we don't 8 have anything of that nature that I can 9 recall. 10 Q. As HCM reviews the manager 11 quartiles in connection with the 360 12 quartiles, does HCM run a report that 13 specifically lists those two things side by 14 side? 15 A. We do. Yesterday when we 16 looked at the materials that were prepared 17 for compensation committee, aside from the 18 compensation information we also had the 360 19 rank next to the manager quartile column. 20 Q. I do recall that. Apart from 21 the materials prepared for the compensation 22 committee, does IMD run a separate report 23 that compares the performance review rank and 24 the manager quartile? 25 A. Our managers use CRS for</p>	<p>1 employees who have ranks and quartiles that 2 differ by a certain degree? 3 MS. SULLIVAN: Objection vague. 4 A. The two data points the manager 5 quartile and 360 rank are both in the report 6 if not side by side in close proximity to 7 each other column wise. I can't recall any 8 flags or highlights like you indicated, but 9 both data sets are there again in close 10 proximity to each other so we can scan for 11 any differences. 12 Q. Is there a threshold of 13 difference above which HCM will always ask a 14 manager to clarify the reason for the 15 difference? 16 MS. SULLIVAN: Objection vague. 17 A. HCM will ask questions whenever 18 there is a meaningful difference between the 19 two. In terms of how we define meaningful if 20 it's one step or two steps, I think that 21 partly depends on what the 360 rank actually 22 is and what the manager quartile actually is. 23 Clearly if the manager rank is one and the 24 review score is five or vice-versa, even if 25 it's not systematically flagged in the</p>
Page 324	Page 326
<p>1 quartiling as well and so those two data 2 fields are and when I say those two data 3 fields meaning the current year manager 4 quartile recommendation and the current year 5 360 quartile are fields and we can do 6 reporting out of the CRS system. 7 Q. Do you do reporting each year 8 out of the CRS system to compare specifically 9 the performance review rank and the manager 10 quartile? 11 A. We do that. 12 Q. In the course of that specific 13 report, do your reports have any mechanism 14 for flagging or highlighting employees who 15 have a certain degree of difference between 16 their performance review score and the 17 manager quartile? 18 MS. SULLIVAN: Objection vague. 19 A. Would you mind rephrasing the 20 question? 21 Q. I'm asking whether in the 22 specific report that HCM runs comparing the 23 performance review rank to the manager 24 quartile if there is a mechanism in that 25 report that calls out or flags or highlights</p>	<p>1 report, that will be a population we want to 2 understand. If the scores are both twos or 3 threes, we may question those as well, but 4 the disparity is not as great as the other 5 example that I gave. 6 Q. Within HCM is there a guideline 7 or criteria that you're aware of that tells 8 HCM employees hey, if you have this magnitude 9 of difference between the performance review 10 rank and manager quartile you need to follow 11 up or is it up to the HCM employee who's 12 reviewing the reports discretion? 13 MS. SULLIVAN: Objection vague 14 and compound. 15 A. Let me answer that in two parts 16 so the first part is that HCM has ever since 17 we had the performance review rank and 18 manager quartiling as well we always compared 19 the two to see where there may be 20 discrepancies that we want to understand 21 more. In recent years, we have formalized 22 kind of what we have always done and I would 23 say this is also in connection with our team 24 being client aligned and being responsible 25 for certain businesses that we are using a</p>

Page 327	Page 329
<p>1 similar approach for all of the areas that we</p> <p>2 cover to say -- and again, these are</p> <p>3 guidelines, these are not formulaic or hard</p> <p>4 and fast rules, to say if it's X steps</p> <p>5 different, this is an area that you may want</p> <p>6 to look into, but again, they are just</p> <p>7 guidelines and doesn't mean that if it's not</p> <p>8 flagged or not part of that, you should not</p> <p>9 look into it.</p> <p>10 Q. What is X?</p> <p>11 A. What is X. It depends on what</p> <p>12 the -- let me clarify what I said. As I</p> <p>13 think about this formalization a bit more, it</p> <p>14 actually compares the manager quartile</p> <p>15 recommendation not to the 360 degree rank,</p> <p>16 but actually to an overall score so what I</p> <p>17 was thinking was actually slightly different.</p> <p>18 Q. To what overall score does it</p> <p>19 compare the manager quartile?</p> <p>20 A. It compares the manager</p> <p>21 quartile to an overall manager score.</p> <p>22 Q. What is the overall manager</p> <p>23 score?</p> <p>24 A. The overall manager score was</p> <p>25 introduced in 2012 in IMD.</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 328	Page 330
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9A - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED AUGUST 1, 2013
(PAGES 331-394)**

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Page 395	Page 397
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Q. I'll ask you for an answer</p>	<p>1 at was in 2010 and my question is whether</p> <p>2 after that --</p> <p>3 A. 2011 to present?</p> <p>4 Q. -- if there's been any</p> <p>5 meaningful changes in the 360 degree review</p> <p>6 process?</p> <p>7 MS. SULLIVAN: Objection vague.</p> <p>8 A. As I stated before, we became</p> <p>9 attributed in 2012 and again all that means</p> <p>10 is that it's attributed to managers so it</p> <p>11 remains unattributed to employees. The other</p> <p>12 change I mentioned before was also in 2012 we</p> <p>13 introduced the manager score. Those are the</p> <p>14 two main changes that come to mind.</p> <p>15 Q. Are managing directors in IMD</p> <p>16 categorized as extended managing directors</p> <p>17 and participating managing directors?</p> <p>18 A. Yes, they are.</p> <p>19 Q. Is there any other category of</p> <p>20 managing director?</p> <p>21 A. No, those are the two.</p> <p>22 Q. Is a participating managing</p> <p>23 director sometimes referred to as a partner?</p> <p>24 A. Yes, they are the same.</p> <p>25 Q. When a vice-president is</p>
Page 396	Page 398
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 promoted, is it to an extended managing</p> <p>2 director or a participating managing</p> <p>3 director?</p> <p>4 A. To an extended managing</p> <p>5 director which we refer to as EMD for short.</p> <p>6 Q. Have you ever heard of a</p> <p>7 vice-president being promoted to a</p> <p>8 participating managing director?</p> <p>9 A. No, I have not heard that</p> <p>10 before.</p> <p>11 Q. Is there a group or committee</p> <p>12 responsible for promotions from VP to EMD</p> <p>13 within the investment management division?</p> <p>14 MS. SULLIVAN: Objection vague.</p> <p>15 A. There is a process around</p> <p>16 determining promotions from VP to EMD and</p> <p>17 there is a number of people involved in that.</p> <p>18 Q. Are you referring to the</p> <p>19 cross-ruffing process?</p> <p>20 A. Yes, I'm referring to the</p> <p>21 cross-ruffing process.</p> <p>22 Q. Can you describe how the</p> <p>23 cross-ruffing process works in IMD?</p> <p>24 A. There is a number of steps.</p> <p>25 I'll start with the first one. The first</p>

Page 399	Page 401
<p>1 step of the process is we meaning IMD comes 2 up with the cross-ruffing team. Those are 3 the individuals that are primarily 4 responsible for interviewing other MDs for 5 their views on the candidates. 6 Q. Who in IMD is responsible for 7 coming up with the cross-ruffing team? 8 A. So the process of coming up 9 with a cross-ruffing team is quite extensive. 10 Throughout the year as HCM and the business 11 engages in just regular normal day-to-day 12 dialogue with our senior leaders and business 13 unit managers there may be names that come up 14 as far as this person is a very strong 15 performer, we think he or she would be 16 interested in cross-ruffing and would be a 17 great candidate for cross-ruffing and so when 18 we first think about creating the 19 cross-ruffing team, HCM puts together a list 20 of individuals that from our perspective 21 would be good for the cross-ruffing team and 22 will incorporate any feedback that other HCM 23 has heard or IMD has provided as well so a 24 long list so to speak. 25 Q. Who reviews the initial list of</p>	<p>1 leader? 2 MS. SULLIVAN: Objection vague. 3 A. Let me clarify so we'll -- this 4 process is particularly sensitive so we'll 5 share the list and sometimes maybe we'll 6 e-mail the full list with our division heads 7 and COO. In terms of sharing the names on the 8 preliminary list with our business unit 9 heads, those are mostly conversations so 10 nothing kind of going back and forth by 11 e-mail. 12 Q. How do you arrive at a final 13 list of cross-ruffers? 14 A. The final list of 15 cross-ruffers, the other role HCM plays in 16 this process in terms of facilitating it is 17 we'll also provide the past few years of 18 cross-ruffing team so we can compare year 19 over year the sizes of the teams and also 20 what the composition is. We are able to -- 21 we want the cross-ruffing team to be 22 reflective of IMD as a global division and so 23 we'll provide information as it relates to 24 the businesses that these cross-ruffers sit 25 in, the regions they represent and we also</p>
Page 400	Page 402
<p>1 cross-ruffing HCM puts together? 2 A. We'll review that with the 3 senior leadership division heads and COO. 4 We're also engaging simultaneously as we are 5 reviewing with senior leadership 6 conversations with the business unit heads as 7 well especially if we've received feedback 8 that so and so would be great to say is that 9 still the case and are there others you think 10 would be good as well. 11 Q. Does HCM send their initial 12 list of cross-ruffers to each business unit's 13 head for their feedback? 14 A. When the list is in the initial 15 stage, we review the entire list with the 16 division heads and the COO. Because it's in 17 initial stages and it cuts across businesses, 18 the dialogues we have with the business unit 19 heads are more specific to the individuals in 20 their business whether it would still be 21 recommended that they be on the team. 22 Q. So am I understanding you 23 correctly that HCM sends the subset of the 24 initial list of cross-ruffers from the 25 business units business to the business unit</p>	<p>1 REDACTED FILED UNDER SEAL 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9A - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED AUGUST 1, 2013
(PAGES 403-426)**

FILED UNDER SEAL

Page 427

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Page 428

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Page 429

1 strong financial results compared to peers,

2 that would be one indication. If the

3 individual had a good quartile compared to

4 peers, that would be another indication.

5 Q. Does a VP need to be a quartile

6 one employee to be promoted?

7 A. No.

8 Q. Does a VP to be at least a

9 quartile two to be promoted?

10 A. Not necessarily.

11 Q. Does a VP need to be at least a

12 quartile three or above to be promoted?

13 A. Based on my experience I would

14 say that our strongest performers are

15 promoted and typically they would be ranked

16 Q1s and Q2s, but that's not to say it could

17 not be a different quartile.

18 Q. Do they need to have been

19 highly ranked throughout their entire career?

20 A. Not necessarily.

21 Q. Are there any published minimum

22 eligibility requirements for a VP to be

23 considered eligible for promotion to MD?

24 MS. SULLIVAN: Objection, asked

25 and answered, vague.

Page 430

1 A. So in the Exhibit 153 which is

2 the cross-ruffing workshop materials, there

3 are actually categories and criteria for both

4 external producing and internal producing

5 roles.

6 Q. Which page are you referring

7 to?

8 A. 0113558.

9 Q. Are you aware of any other

10 published criteria for eligibility for

11 promotion to MD other than this document and

12 its comparators for each year?

13 MS. SULLIVAN: Objection vague.

14 A. Promotion to MD isn't a check

15 the box exercise so in addition to the

16 criteria that's outlined in this and similar

17 documents, in other years business priorities

18 also come into play, but at a high level this

19 document outlines the key considerations.

20 Q. Is this a firm document?

21 MS. SULLIVAN: Objection vague.

22 A. This document appears to be a

23 firm document.

24 Q. Was this document used in the

25 IMD?

Page 431	Page 433
<p>1 A. This document was used in IMD 2 as part of the cross-ruffing workshop which 3 is to train our cross-ruffers so to speak on 4 how to go through the process. 5 Q. Has IMD used a firm 6 cross-ruffing workshop document each year 7 from 2002 to the present? 8 MS. SULLIVAN: Objection vague. 9 A. My understanding is we 10 leveraged the firm wide document, the firm 11 wide cross-ruffing workshop document every 12 year because at a high level these bullets 13 address the main or key things that we look 14 for in candidates. 15 Q. Are you aware of any IMD 16 specific cross-ruffing guidelines other than 17 the e-mail that you mentioned earlier that 18 was sent out launching the process in 2003 to 19 2005? 20 MS. SULLIVAN: Objection, I 21 think you are mischaracterizing the 22 testimony. 23 A. Let me clarify one thing. The 24 e-mail I mentioned earlier was a firm wide 25 e-mail. In terms of any other IMD specific</p>	<p>1 A. My understanding is that was 2 true through about 2007. 3 Q. From 2002 to 2007 is that true? 4 A. Yes. 5 Q. Is it accurate to say that 6 since 2007 through the present managing 7 directors have had to nominate candidates for 8 promotion to MD by talking to their business 9 unit leaders? 10 A. That's not the only forum that 11 IMD MDs can nominate candidates to the long 12 list. 13 Q. How else can they nominate 14 candidates to the long list since 2007? 15 A. IMD hosts a town hall for the 16 global MD population where they can see the 17 long list of candidates and in that open 18 forum voice their opinions if there is 19 individuals that are not on currently on the 20 list that they feel should be added. 21 Q. Do you mean an MD can literally 22 raise their hand and say out loud in that 23 forum I think a person should be added? 24 A. Yes, that's correct. 25 Q. Are you aware of instances of</p>
Page 432	Page 434
<p>1 documents, I can't recall any at the time. 2 As I said before, we leverage the firm wide 3 document during the cross-ruffing workshops, 4 but IMD hosts its own cross-ruffing workshops 5 so there will be verbal speaking points and 6 overlays to this. 7 Q. I want to clarify what you mean 8 by you can't recall any at the time. Do you 9 mean from 2002 to the present? 10 A. That's correct, in terms of 11 written documents. 12 Q. Is there a minimum number of 13 years a person must have been a VP in IMD in 14 order to be eligible for promotion? 15 A. Not that I'm aware of. 16 Q. Who has the authority to 17 nominate candidates to the long list? 18 MS. SULLIVAN: Objection vague. 19 A. All MDs in IMD have the ability 20 to nominate to the long list. 21 Q. Has IMD ever allowed MDs to 22 make such nominations through a web 23 submission? 24 A. We have. 25 Q. In what years was that true?</p>	<p>1 that happening? 2 A. Yes, I am. 3 Q. Has that town hall taken place 4 in all years from 2002 to the present? 5 A. I'm not sure I could speak to 6 since 2002 to the present, but at a minimum 7 since the nomination website went away in 8 approximately the 2007 time period, we have 9 had that town hall. 10 Q. Is there a minimum number of 11 years that a vice-president must have worked 12 in the industry in order to be eligible for 13 promotion? 14 A. Not that I'm aware of. 15 Q. After the division has come up 16 with it's culled down final list of 17 candidates for cross-ruffing, what's the next 18 step? 19 A. The next step is cross-ruffers 20 begin the interview or cross-ruffing process. 21 Q. Prior to the beginning of the 22 cross-ruffing process, does the division 23 submit its list of candidates to the firm? 24 A. Yes, it does. 25 Q. To which group or entity in the</p>

Page 435	Page 437
<p>1 firm?</p> <p>2 A. HCM submits -- from an</p> <p>3 administration perspective HCM submits the</p> <p>4 list on behalf of the division to the talent</p> <p>5 assessment group.</p> <p>6 Q. And does the division also</p> <p>7 submit a list of cross-ruffing to the talent</p> <p>8 assessment group?</p> <p>9 A. Yes. I want to clarify one</p> <p>10 point which is IMD HCM's involvement in the</p> <p>11 MD promotion process has evolved over time so</p> <p>12 in the early 2000s HCM played a smaller role</p> <p>13 so we played a smaller role in the process.</p> <p>14 Q. Let's focus on the time period</p> <p>15 from 2002 to 2007?</p> <p>16 A. Okay.</p> <p>17 Q. Can you describe the HCM role</p> <p>18 in that time period?</p> <p>19 A. It was largely administrative</p> <p>20 so somewhere how I described before.</p> <p>21 Q. Still true in that time period</p> <p>22 the division submits its list of both</p> <p>23 candidates for promotion and cross-ruffing to</p> <p>24 the firm?</p> <p>25 A. HCM would submit it on the</p>	<p>1 a list of cross-ruffing team and candidates</p> <p>2 for promotion to the firm, right so far?</p> <p>3 A. Correct.</p> <p>4 Q. And does the firm need to sign</p> <p>5 off on those lists before the cross-ruffing</p> <p>6 process can begin?</p> <p>7 MS. SULLIVAN: Objection vague.</p> <p>8 A. My understanding is that the</p> <p>9 firm sees the list, but I'm not aware of any</p> <p>10 changes that come out of it.</p> <p>11 Q. What's the purpose of</p> <p>12 submitting the list to the firm?</p> <p>13 MS. SULLIVAN: Objection vague</p> <p>14 as to the continued use of the firm.</p> <p>15 Q. What's the purpose of</p> <p>16 submitting the list to the talent assessment</p> <p>17 group?</p> <p>18 A. To clarify the list of</p> <p>19 candidates or list of cross-ruffing.</p> <p>20 Q. What's the purpose of</p> <p>21 submitting a list of candidates to the talent</p> <p>22 assessment group?</p> <p>23 A. My understanding is the purpose</p> <p>24 is that they are one posted on the list and</p> <p>25 two can share that list, share that</p>
Page 436	Page 438
<p>1 division's behalf.</p> <p>2 Q. Are you aware in that time</p> <p>3 period of any changes to the list of</p> <p>4 candidates for promotion as a result of the</p> <p>5 firm's input?</p> <p>6 MS. SULLIVAN: Objection vague.</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Are you aware in that time</p> <p>9 period of any changes to the cross-ruffing</p> <p>10 team as a result of the firm's feedback?</p> <p>11 MS. SULLIVAN: Objection vague.</p> <p>12 A. Just so I'm understanding it</p> <p>13 correctly, changes to the name on the</p> <p>14 cross-ruffing team?</p> <p>15 Q. Yes.</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. Does the talent assessment</p> <p>18 group have to sign off on the list of</p> <p>19 cross-ruffing and the list of candidates</p> <p>20 before the cross-ruffing process can</p> <p>21 commence?</p> <p>22 MS. SULLIVAN: Objection vague.</p> <p>23 A. Would you mind rephrasing?</p> <p>24 Q. I believe you said that before</p> <p>25 the cross-ruffing process begins, HCM submits</p>	<p>1 information with firm wide management.</p> <p>2 Q. Is it your understanding that</p> <p>3 the talent assessment group needs to give an</p> <p>4 okay or a green light to the division before</p> <p>5 the cross-ruffing process can commence?</p> <p>6 MS. SULLIVAN: Objection vague.</p> <p>7 A. It's not my understanding that</p> <p>8 the talent assessment group needs to approve</p> <p>9 the list before we can start cross-ruffing.</p> <p>10 Q. Is that consistent with your</p> <p>11 understanding that HCM can send the list of</p> <p>12 candidates and list of cross-ruffing to the</p> <p>13 talent assessment group and then the</p> <p>14 cross-ruffing process can begin the next day?</p> <p>15 A. There is a time frame in which</p> <p>16 cross-ruffing can happen so usually it</p> <p>17 doesn't start immediately after, but our</p> <p>18 submission to the talent assessment group is</p> <p>19 more of a posting and what the division heads</p> <p>20 decided and I can't recall where there's been</p> <p>21 a change to it, it's just a posting.</p> <p>22 Q. Can cross-ruffing begin without</p> <p>23 the division having heard anything at all</p> <p>24 back from the talent assessment group?</p> <p>25 MS. SULLIVAN: Objection vague.</p>

Page 439	Page 441
<p>1 A. As I said before, there is 2 usually time between when we submit the list 3 to the talent assessment group and when 4 cross-ruffing begins. Part of the reason we 5 need to submit the information to the talent 6 assessment group is so they can prepare all 7 of the background information that's needed 8 for cross-ruffing.</p> <p>9 Q. Once the cross-ruffing process 10 begins, walk me through the next steps?</p> <p>11 A. Once the cross-ruffing process 12 begins, the cross-ruffers schedule interviews 13 to collect feedback on the candidates in 14 their assigned areas.</p> <p>15 Q. Who decides which MD the 16 cross-ruffer will interview for a particular 17 candidate?</p> <p>18 A. The cross-ruffers can't 19 interview candidates clearly in their own 20 business and so HCM may make an initial 21 suggestion on what those businesses coverages 22 are for the cross-ruffers and will review it 23 with division heads and COO keeping in mind 24 the size of those groups as well.</p> <p>25 Q. Cross-ruffers don't actually</p>	<p>1 interview for a particular candidate?</p> <p>2 A. The cross-ruffers need to speak 3 to the MDs in the business that he or she is 4 assigned to.</p> <p>5 Q. Does the cross-ruffer need to 6 speak with all MDs in the business he or she 7 is assigned to?</p> <p>8 A. By virtue of doing interviews 9 for all of the candidates the cross-ruffer 10 does speak to practically speaking all of the 11 MDs in that group.</p> <p>12 Q. Let me back up for a second. 13 Are cross-ruffers assigned to particular 14 candidates?</p> <p>15 A. They are assigned to particular 16 businesses.</p> <p>17 Q. So is the cross-ruffer expected 18 to interview MDs in that business about all 19 of the candidates in that business?</p> <p>20 A. That's the expectation.</p> <p>21 Q. Does the cross-ruffer conduct a 22 single interview with each MD pertaining to 23 all candidates in the business?</p> <p>24 A. It's a fluid process so the 25 cross-ruffer would reach out to an MD on one</p>
Page 440	Page 442
<p>1 interview the candidates as well?</p> <p>2 A. I don't mean candidates. What 3 I mean is a cross-ruffer will be assigned to 4 interview candidates in a business area 5 outside of their own. Cross-ruffers are 6 assigned to a business area outside of their 7 own and they will interview everyone who can 8 share substantive feedback on the candidates 9 in that business area.</p> <p>10 Q. Are cross-ruffers given a list 11 of which MDs to interview for a particular 12 candidate?</p> <p>13 A. My understanding is we share 14 with cross-ruffers the MDs globally in that 15 business unit. They also have the 16 candidate's feedback books which will have a 17 list of the reviewers so to the extent that 18 they interact -- to the extent that the 19 candidates interact with MDs outside of their 20 business or even in another division, that 21 feedback will be taken into account when 22 those interviews will be conducted.</p> <p>23 Q. So am I understanding you 24 correctly it's up to the cross-ruffer to 25 determine which MDs he or she needs to</p>	<p>1 candidate or on multiple candidates. It's 2 really up to the cross-ruffer how he or she 3 wants to structure the interview.</p> <p>4 Q. Is there an interview check 5 list for each interview?</p> <p>6 A. There is a form that 7 cross-ruffers need to complete ultimately 8 that outlines the type of information that 9 should be solicited.</p> <p>10 Q. Are you referring to the page 11 marked 113560?</p> <p>12 A. Yes.</p> <p>13 Q. Is there a form that 14 cross-ruffers use during the interview with 15 items that they are supposed to cover during 16 the interview?</p> <p>17 A. In the earlier pages in this 18 document there are framework and interview 19 format questions.</p> <p>20 Q. Are you aware of any guidelines 21 for managers on what to ask during a 22 cross-ruffing interview apart from this 23 document and of course similar documents over 24 the years?</p> <p>25 MS. SULLIVAN: I want to note</p>

Page 443		Page 445	
1	for the record this document we are	1	REDACTED FILED UNDER SEAL
2	referring to is Exhibit 153 and it's	2	
3	the 2002 document.	3	
4	A. This is a firm wide document so	4	
5	the questions are relevant, but also broad.	5	
6	Cross-ruffers are, like I said, this is fluid	6	
7	so cross-ruffers are encouraged to explore as	7	
8	they learn information during the interview	8	
9	and, you know, drill down on areas where they	9	
10	want to understand more. This is -- these	10	
11	questions are more a framework and starting	11	
12	point.	12	
13	Q. Are you aware of any other	13	
14	written questions for cross-ruffers or	14	
15	written guidelines?	15	
16	MS. SULLIVAN: Objection vague.	16	
17	A. I would say cross-ruffers have	17	
18	a lot of resources available to them outside	18	
19	of this specific written document so this	19	
20	written document was used during a	20	
21	cross-ruffing workshop where an MD who is	21	
22	well seasoned in the process will add as I	22	
23	stated before verbal speaking points to the	23	
24	core framework questions listed here. The	24	
25	cross-ruffers are also have each other as a	25	
Page 444		Page 446	
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Page 447	Page 449
<p>1 A. The feedback books are the main</p> <p>2 background materials that are prepared. In</p> <p>3 some years I believe short bios were also</p> <p>4 available.</p> <p>5 Q. For which years?</p> <p>6 A. In the early 200s bios were</p> <p>7 available. They may still be available now,</p> <p>8 I just can't recall the specific years.</p> <p>9 Q. Where did the bios come from?</p> <p>10 A. Many employees have standard</p> <p>11 bios that they use. I'm trying to recall if</p> <p>12 they are called GS bio so it would just be</p> <p>13 the standard bio.</p> <p>14 Q. Is it a bio that the employee</p> <p>15 writes him or herself?</p> <p>16 A. It may be -- it's just a</p> <p>17 factual information about when they joined</p> <p>18 and their title and what business so if the</p> <p>19 employee drafted it him or herself it doesn't</p> <p>20 get posted right away. It would need to go</p> <p>21 through whatever team organizes this</p> <p>22 information to make sure everything on there</p> <p>23 is accurate.</p> <p>24 Q. What team is responsible for</p> <p>25 organizing information on employee bios?</p>	<p>1 present the division heads with a ranked list</p> <p>2 of candidates?</p> <p>3 A. They do.</p> <p>4 Q. What's the next step?</p> <p>5 A. The cross-ruffing team also</p> <p>6 provides one pagers which are similar to the</p> <p>7 form we looked at earlier.</p> <p>8 Q. You are referring to page</p> <p>9 113560?</p> <p>10 A. Yes.</p> <p>11 Q. The cross-ruffing team provides</p> <p>12 the one pagers to the division heads; is that</p> <p>13 right?</p> <p>14 A. The division heads see the one</p> <p>15 pagers and they are also ultimately provided</p> <p>16 to the talent assessment group.</p> <p>17 Q. So am I understanding you</p> <p>18 correctly that the cross-ruffing team's</p> <p>19 ranked list of candidates and one page</p> <p>20 summaries is provided to the talent</p> <p>21 assessment group?</p> <p>22 A. Yes.</p> <p>23 Q. Do the division heads</p> <p>24 separately rank the candidates?</p> <p>25 A. They do and I want to clarify</p>
Page 448	Page 450
<p>1 A. I'm not sure.</p> <p>2 Q. Other than employee bios and</p> <p>3 the 360 degree feedback books, are there any</p> <p>4 other materials that cross-ruffers have for</p> <p>5 each candidate?</p> <p>6 MS. SULLIVAN: Objection vague.</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. So after the cross-ruffing</p> <p>9 interviews take place, what's the next step</p> <p>10 in the process?</p> <p>11 A. So after the cross-ruffing</p> <p>12 interviews take place, the cross-ruffing team</p> <p>13 meets again as a group to discuss the</p> <p>14 results.</p> <p>15 Q. What happens next?</p> <p>16 A. They then, you know, engage in</p> <p>17 a dialogue with each other and begin to</p> <p>18 triage the list.</p> <p>19 Q. What happens next?</p> <p>20 A. The cross-ruffing team will</p> <p>21 discuss their triage list with the</p> <p>22 co-captains to the extent they are not</p> <p>23 already in those conversations and then that</p> <p>24 gets shared with the division heads.</p> <p>25 Q. Does the cross-ruffing team</p>	<p>1 something because I missed a step which is</p> <p>2 that once the cross-ruffing team meets again</p> <p>3 to discuss their results and triage their</p> <p>4 list, IMD hosts another town hall for all the</p> <p>5 MDs where they once again present the total</p> <p>6 slate of candidates in the triaged format and</p> <p>7 it's a forum for people to comment.</p> <p>8 Q. Is it presented in the forum in</p> <p>9 the ranked format?</p> <p>10 A. In a triaged format, not in a</p> <p>11 ranked format.</p> <p>12 Q. Are you aware of any changes</p> <p>13 being made to the final list of candidates</p> <p>14 based on the town hall meeting?</p> <p>15 A. There may be. Personally I</p> <p>16 haven't been as close to the process so I</p> <p>17 can't point to a specific example, but the</p> <p>18 town hall is an opportunity for all the MDs</p> <p>19 and IMDs to look at the list again.</p> <p>20 Q. Do you know who would know?</p> <p>21 A. I'm not sure who would know</p> <p>22 across the years. I would have to think</p> <p>23 about the names. I would add that the</p> <p>24 cross-ruffing team has done extensive work</p> <p>25 through the interview process and while the</p>

Page 451	Page 453
<p>1 town hall is a forum to MDs for MDs to share 2 their comments, those same MDs were involved 3 in the interviews so for the most part there 4 is a lot of agreement in terms of the 5 triaging and the MD's views. 6 Q. What's the difference between a 7 triage list and ranked list? 8 A. A ranked list would be one 9 through 100 if there were 100 candidates. A 10 triage list would be bucketing. 11 Q. Can you tell me how the 12 bucketing works? 13 A. So the bucketing could be for 14 example three categories of definitely 15 promoting this year, there is no definite 16 that's most likely promoting this year, 17 borderline or consider for next cycle. 18 Q. Has IMD used three buckets and 19 the triage list throughout the time period? 20 A. As far as I can recall, yes. 21 Q. So the division heads submit a 22 separate ranked list of candidates to the 23 talent assessment group, right? 24 A. That's right. 25 Q. What's the next step?</p>	<p>1 firm with its firm wide broader perspective 2 will look at the relative priorities of each 3 division and also based on historical class 4 sizes and percentage of the population and 5 determine what an appropriate number may be 6 for that year. 7 Q. Isn't it true that the firm 8 wide management committee needs to approve 9 the final list of candidates for promotion to 10 MD? 11 MS. SULLIVAN: Objection, 12 mischaracterizing her testimony. 13 A. Once the list is finalized, 14 it's shared with TAG who shares it with the 15 firm or the management committee and they get 16 to see who's been prioritized for IMD for the 17 year. I would say it's more of a posting. 18 They may have questions about the list 19 whether that's on an individual basis or more 20 just representation, you know, across 21 business lines, but clearly when promoting a 22 new class of MDs, it's something that they 23 should be posted on and aware of. 24 Q. Could you please turn to page 25 18, the final page of Exhibit 153?</p>
Page 452	Page 454
<p>1 A. The division heads do see -- 2 just to be clear, they do see the 3 cross-ruffing teams rank as well before they 4 submit their list to the talent assessment 5 group. 6 Q. What happens to the final list 7 of VPs being promoted to MD? 8 A. So the division heads and 9 cross-ruffing team come together again to 10 discuss the triaged list and usually there is 11 a discussion about numbers as well in terms 12 of how many are we going to make and they 13 come to agreement on what the ranking is. 14 Q. Did you say on how many we are 15 going to make? 16 A. Let me clarify. The division 17 heads and cross-ruffing team come together 18 again to discuss the triaged list. 19 Q. Who decides how many people 20 will be promoted to MD in the division each 21 year? 22 A. Each division has a view on how 23 many MDs should be promoted and they state 24 their business cases to the firm. The MD 25 title is clearly a special title and so the</p>	<p>1 A. Okay. 2 Q. If you look at the third box 3 down the bullet point reads MC, I assume that 4 stand for management committee; is that 5 right? 6 A. That's correct. 7 Q. Management committee finalizes 8 MD/PCP class of 2002 in consultation with 9 division heads/regional heads. Is that 10 accurate? 11 A. This is consistent with what I 12 said before where the division submits its 13 final triage list of candidates to the 14 management committee and then they engage in 15 a discussion with the division heads to agree 16 upon a final class. 17 Q. Are you ever aware of any 18 instances of the list of employees being 19 promoted to MD is changed based on the 20 management committee's review of the list? 21 A. Not that I can recall. 22 Q. To your knowledge in every year 23 from 2002 to the present the management 24 committee has approved the list as submitted 25 by the division heads?</p>

Page 455		Page 457	
1	A. To my knowledge that has been	1	REDACTED FILED UNDER SEAL
2	the case every year.	2	
3	THE WITNESS: Can we take a	3	
4	quick five minute bathroom break?	4	
5	MS. SHAVER: Absolutely.	5	
6	(Recess taken.)	6	
7	Q. Do cross-ruffers have a	7	
8	candidate's manager quartile available to	8	
9	them in the cross-ruffing process?	9	
10	A. I don't believe they have the	10	
11	manager quartile. They have the information	11	
12	in the review feedback book.	12	
13	Q. If you wanted to be 100 percent	13	
14	sure about that, how would you go about	14	
15	checking?	15	
16	A. In the website that the	16	
17	feedback reports and bios that I mentioned	17	
18	are posted on, I'm not sure if those websites	18	
19	exist, but we could possibly check if	19	
20	quartiles were shared in one way or another	20	
21	with cross-ruffers.	21	
22	Q. What is that website called?	22	
23	A. It's the -- I think it's the	23	
24	cross-ruffing website which has the	24	
25	resources.	25	
Page 456		Page 458	
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**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9A - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED AUGUST 1, 2013
(PAGES 459-467)**

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